

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:18-00140

JAMES BROYLES

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion to reduce his sentence based upon a reduction in the applicable sentencing guideline. See ECF No. 40. On November 1, 2023, a multi-part criminal history amendment designated as Amendment 821 in Appendix C to the *Guidelines Manual* became effective. Part A of the amendment addresses status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for "Zero-Point Offenders" (those with no criminal history points) whose offense did not involve specified aggravating factors. Parts A and B, subpart 1 of the criminal history amendment both have retroactive effect. Recognizing that the courts, probation officers, and the Bureau of Prisons would need time to process motions and prepare release plans, the Commission also decided to require that any reduction in the

term of imprisonment based on retroactive application of Amendment 821 not be effective until February 1, 2024, or later. (See Amendment 825 to USSG §1B1.10, effective November 1, 2023). Accordingly, an order reducing a term of imprisonment based upon retroactive application of Amendment 821 must have an effective date of February 1, 2024, or later.

Pursuant to a Standing Order entered on October 31, 2023, the court has instituted a review of the sentence imposed in this matter and the court, in consultation with the United States Probation Office, has designated this defendant for **Expedited** consideration.

The United States Attorney's Office is **ORDERED** to file any objection to a sentence reduction for this defendant within seven days of entry of this Order.

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Attorney, the Federal Public Defender, and the United States Probation Office.

IT IS SO ORDERED this 27th day of December, 2023.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge